

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

SUSAN McCULLAR

VS.

SAM'S EAST, INC.

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CIVIL ACTION NO.: 21-CV-51

JURY DEMANDED

INDEX OF DOCUMENTS FILED
WITH REMOVAL ACTION

- A. Plaintiff's Original Petition.
- B. CT Corporation Service of Process Transmittal and Citation.
- C. Defendant's Original Answer to Plaintiff's Original Petition.
- D. Defendant's Demand for Jury Trial.
- E. District Clerk's Register of Actions.
- F. List of Counsel of Record.

Exhibit A

Filed
2/11/2021 10:44 AM
Anne Lorentzen
District Clerk
Nueces County, Texas

CAUSE NO. 2021CCV-60178-2

SUSAN McCULLAR
Plaintiff,

VS.

SAM'S EAST, INC.
Defendant,

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IN THE COUNTY COURT

AT LAW NO. _____

NUECES COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, SUSAN McCULLAR, hereinafter sometimes referred to as Plaintiff, and files this her Original Petition complaining of Defendant, Sam's East, Inc. (Sam's Club) and in support would show the Court as follows:

**I.
Discovery**

Plaintiff intends that the discovery in this suit be conducted under Section 190.4 (Level 3) of the Texas Rules of Civil Procedure.

**II.
Parties and Service**

Plaintiff, Susan McCullar, is a resident of Corpus Christi, Nueces County, Texas.

Defendant, Sam's East, Inc., is a Foreign For Profit Corporation with its principle place of business located at 5858 South Padre Island Drive, Corpus Christi, Texas 78412. Defendant can be served by serving its registered agent, C T Corporation System, 1999 Bryan Street, #900, Dallas, Texas 75201-3136.

**III.
Jurisdiction and Venue**

Jurisdiction is proper in this Texas court because the amount of damages sought exceeds the minimum jurisdictional limits of this Court.

These claims do not raise any issues of federal question as Plaintiff expressly disavows any claims being made pursuant to federal law, treaties, or the United States Constitution.

Pursuant to §15.002(a)(1) of the Texas Civil Practice and Remedies Code, venue is proper in Nueces County, Texas, as it is the county in which all or a substantial part of the events or omissions giving rise to this claim occurred.

IV. Facts

On March 4, 2019, Susan McCullar was an invitee at Sam's Club located at 4833 South Padre Island Drive in Corpus Christi, Nueces County, Texas. After arriving at the store and completing her shopping, Plaintiff was proceeding into the parking lot. As she was pushing her shopping cart containing the items she purchased, her shopping cart fell into a pothole in the parking lot causing the shopping cart to flip and Plaintiff to fall. Plaintiff sustained significant injuries as a result of this incident.

V. Respondeat Superior

The Defendant named herein at all times acted through their agents, servants and employees and are therefore liable for their negligent acts and omissions under the doctrine of respondeat superior.

VI. Causes of Action

The condition of the parking lot posed an unreasonable risk of harm to Plaintiff on the date of the incident. Defendants knew, or reasonably should have known, of the danger posed by the defective condition of the parking lot. Defendants failed to exercise ordinary care to protect Plaintiff from the danger, by both failing to adequately warn her and by failing to make the condition reasonably safe.

Specifically, the large pothole caused the loaded shopping cart to flip as Plaintiff attempted to utilize the parking lot to access her vehicle. This portion of the parking lot was in a horrible condition of repair. The large pothole in the parking lot was not apparent to a shopper pushing a shopping cart containing purchased items. The large pothole in the parking lot was not apparent to Plaintiff who was pushing a shopping cart containing items she purchased from Defendant. Additionally, there were no warnings of the unreasonable dangerous condition in the parking lot.

Additional defects which made the parking lot unreasonably dangerous may become apparent after further inspection.

As a result of Defendants acts of negligence as set out above, Plaintiff suffered significant injuries.

VII. Causation

The incident made the basis of this suit, and the resulting injuries and damages to Plaintiff Susan McCullar, was proximately caused by the negligent acts of omission and/or commission of the Defendants, their agents, servants and/or employees who were acting within the course and scope of their employment.

VIII. Damages

Plaintiff has sustained, and will continue to sustain in the future, the following damages:

- a. physical pain and mental anguish;
- b. loss of earning capacity;
- c. physical impairment;
- d. reasonable expenses of necessary medical care; and
- e. disfigurement.

Plaintiff seeks monetary relief of not more than \$1,000,000.00 dollars for her damages, excluding interest, statutory or punitive damages and penalties, and attorney fees and costs.

**IX.
Jury Demand**

Pursuant to Tex. R. Civ. P. 216, Plaintiff respectfully demands trial by jury and has tendered the jury fee along with the filing fee in this cause.

**X.
Prayer**

WHEREFORE, PREMISES CONSIDERED, Plaintiff Susan McCullar asks the Court to enter judgment in her favor, to include pre-judgment and post-judgment interest, costs of court, and such other relief to which the Plaintiff may be justly entitled.

Respectfully submitted,

By: /s/ Jeffrey W. Schmidt
Jeffrey W. Schmidt
Texas State Bar No. 00784923
BANDAS LAW FIRM, P.C.
802 N. Carancahua, Ste. 1400
Corpus Christi, Texas 78401
Telephone: (361) 698-5200
Facsimile: (361) 698-5222
E-mail: jschmidt@bandaslawfirm.com

ATTORNEY FOR PLAINTIFF

Exhibit B



**Service of Process
Transmittal**

02/25/2021

CT Log Number 539120509

TO: Kim Lundy Service Of Process
Walmart Inc.
702 SW 8TH ST
BENTONVILLE, AR 72716-6209

RE: Process Served in Texas

FOR: Sam's East, Inc. (Domestic State: AR)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: McCullar Susan, Pltf. vs. Sam's East, Inc., Dft.

DOCUMENT(S) SERVED: Citation(s), Return(s), Petition, Notice, Standing Order

COURT/AGENCY: County Court at Law No. 2 Nueces County, TX
Case # 2021CCV601782

NATURE OF ACTION: Personal Injury - Slip/Trip and Fall - 03/04/2019 - Located at 4833 South Padre Island Drive in Corpus Christi, Nueces County, Texas

ON WHOM PROCESS WAS SERVED: C T Corporation System, Dallas, TX

DATE AND HOUR OF SERVICE: By Process Server on 02/25/2021 at 02:19

JURISDICTION SERVED : Texas

APPEARANCE OR ANSWER DUE: By 10:00 a.m. on the Monday next following the expiration of 20 days after service

ATTORNEY(S) / SENDER(S): Jeffrey W. Schmidt
Bandas Law Firm, P.C.
802 N Carancahua
Ste. 1400
Corpus Christi, TX 78401
361-698-5200

ACTION ITEMS: CT has retained the current log, Retain Date: 02/27/2021, Expected Purge Date: 03/04/2021

Image SOP

Email Notification, Kim Lundy Service Of Process ctlawsuits@walmartlegal.com

REGISTERED AGENT ADDRESS: C T Corporation System
1999 Bryan Street
Suite 900
Dallas, TX 75201
877-564-7529
MajorAccountTeam2@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other



**Service of Process
Transmittal**

02/25/2021

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TO: Kim Lundy Service Of Process
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702 SW 8TH ST
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RE: Process Served in Texas

FOR: Sam's East, Inc. (Domestic State: AR)

advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.

Copy

Date: 2/25/21
 Time: 12:45 PM
 Initials: SSK

Citation for Personal Service – RESIDENTCase Number: **2021CCV-60178-2**

THE STATE OF TEXAS

NOTICE TO DEFENDANT: You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org.

TO: **Sam's East, Inc.**
Registered Agent - C T Corporation System
1999 Bryan Street #900
Dallas Tx 75201-3136

the Defendant,

GREETING: You are commanded to appear by filing a written answer to the **Plaintiff's Original Petition With Attached Covid Standing Orders And Notice** at or before 10:00 o'clock a.m. of the Monday next after the expiration of 20 days after the date of service of this citation before the **Honorable Lisa Gonzales, County Court at Law #2** of Nueces County, Texas at the Courthouse of said County in Corpus Christi, Texas. Said **Petition** was filed on the 11th day of February, 2021. A copy of same accompanies this citation. The file number of said suit being Number: **2021CCV-60178-2**

The style of the case is: **Susan McCullar vs. Sam's East, Inc.**

Said Petition was filed in said court by **Jeffrey W. Schmidt**, attorney for Plaintiff, whose address is 802 N Carancahua Ste 1400 Corpus Christi Tx 78401 .

The nature of the demand is fully shown by a true and correct copy of the Petition accompanying this citation and made a part hereof.

The officer executing this writ shall promptly mail the same according to requirement of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said court at Corpus Christi, Texas, this 23rd day of February, 2021.



ANNE LORENTZEN, DISTRICT CLERK
NUECES COUNTY, TEXAS
 901 LEOPARD STREET, ROOM 313
 CORPUS CHRISTI, TEXAS 78401

Signed: 2/23/2021 02:34 PM
 BY: Nadia Contreras, Deputy
 Nadia Contreras

Exhibit C

NO.: 2021 CCV-60178-2

SUSAN MCCULLAR

VS.

SAM'S EAST, INC.

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IN THE COUNTY COURT

AT LAW NO.

NUECES COUNTY, TEXAS

DEFENDANT'S ORIGINAL ANSWER TO PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, SAM'S EAST, INC., Defendant in the above numbered and entitled cause of action, and files this Original Answer to Plaintiff's Original Petition and for support thereof would respectfully show unto the Court as follows:

I.

Defendant asserts denials, under Rule 92 of the Texas Rules of Civil Procedure, to each and every allegation contained in the said Petition, and demands strict proof thereof.

II.

Pleading further and without waiving the foregoing, Defendant asserts that if Plaintiff suffered injuries as a result of the incident made the basis of this lawsuit, which Defendant expressly denies by the filing of this pleading, that said injuries were caused in whole or in part by Plaintiff's own negligence or responsibility. Accordingly, Defendant asserts all rights, privileges and remedies afforded or available pursuant to Chapter 33 of the Texas Civil Practices and Remedies Code.

III.

Pleading further and without waiving the foregoing, Defendant asserts that any damages allegedly suffered by Plaintiff as a result of the incident made the basis of this lawsuit, which Defendant expressly denies by the filing of this pleading, were exacerbated by Plaintiff's failure

to mitigate said damages. Accordingly, Defendant asserts all rights, privileges and remedies afforded or available to it pursuant to the Texas Civil Practices and Remedies Code.

IV.

Pleading further and without waiving the foregoing, Defendant asserts that Plaintiff's recovery of medical or health care expenses, if any, is limited to the amount actually paid or incurred by or on behalf of Plaintiff. Accordingly, Defendant asserts all rights, privileges and remedies afforded or available to it pursuant to §41.0105 of the Texas Civil Practices and Remedies Code.

V.

Pleading further and without waiving the foregoing, Defendant asserts that Plaintiff may have had pre-existing injuries and/or conditions to Plaintiff's body, and if Plaintiff was injured as a result of the alleged incident, such injury is due, in whole or in part, to these pre-existing injuries or conditions.

VI.

Pleading further and without waiving the foregoing, if exemplary damages are awarded to Plaintiff, Defendant intends to invoke the cap in the Damages Act, Texas Civil Practices and Remedies Code chapter 41, which restricts and limits Plaintiff's claim for exemplary damages.

VII.

Pleading further and without waiving the foregoing, Defendant asserts that the incident in question was proximately caused or solely proximately caused by the negligent and/or wrongful conduct of persons or third parties outside the control of this Defendant. Accordingly, Defendant asserts all rights, privileges and remedies afforded or available to it pursuant to Chapter 33 of the Texas Civil Practices and Remedies Code.

VIII.

Pleading further and without waiving the foregoing, Defendant would show that Plaintiff's alleged injuries and damages are the result of subsequent injuries or conditions which were a proximate cause, or producing cause, or the sole producing cause of Plaintiff's injuries and/or damages and not the result of any negligence on the part of this Defendant.

IX.

Pleading further and without waiving the foregoing, Defendant specifically reserves the right to amend this Answer, as is its right under the Texas Rules of Civil Procedure.

PREMISES CONSIDERED, SAM'S EAST, INC. prays that Plaintiff take nothing by this lawsuit, and that Defendant be allowed to go hence without day and recover all of their costs and attorneys' fees, and such other and further relief, both special and general, at law or in equity, to which they may show themselves justly entitled.

Respectfully submitted,

DAW & RAY, LLP

/s/ James K. Floyd

Willie Ben Daw, III; TBN:05594050

Email: wbdaw@dawray.com

James K. Floyd, TBN: 24047628

Email: jfloyd@dawray.com

14100 San Pedro Ave.

Suite 302

San Antonio, TX 78232

(210) 244-3121 Telephone

(201) 224-3188 Facsimile

**ATTORNEYS FOR DEFENDANT
SAM'S EAST, INC.**

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the above and foregoing instrument has been served upon all known counsel of record by electronic service on this the 22nd day of March, 2021.

Jeffrey W. Schmidt
BANDAS LAW FIRM, P.C.
802 N. Carancahua, Ste. 1400
Corpus Christi, Texas, 78401

Email: jschmidt@bandaslawfirm.com

/s/ James K. Floyd

James K. Floyd

Exhibit D

NO.: 2021 CCV-60178-2

SUSAN MCCULLAR	§	IN THE COUNTY COURT
	§	
VS.	§	AT LAW NO.
	§	
SAM'S EAST, INC.	§	NUECES COUNTY, TEXAS

DEFENDANT'S DEMAND FOR JURY TRIAL

COMES NOW, Defendant SAM'S EAST, INC. and hereby demands a jury trial as is their right under Tex. Const. Art. I, § 15. Such demand for jury trial is hereby made more than 30 days before the date this case is set for trial in accordance with Tex. R. Civ. P. 216. Defendant tenders the jury fee contemporaneously with the filing of this jury demand which they may show themselves justly entitled.

Respectfully submitted,

DAW & RAY, LLP

/s/ James K. Floyd

Willie Ben Daw, III; TBN:05594050

Email: wbdaw@dawray.com

James K. Floyd, TBN: 24047626

Email: jfloyd@dawray.com

14100 San Pedro Ave.

Suite 302

San Antonio, TX 78232

(210) 244-3121 Telephone

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**ATTORNEYS FOR DEFENDANT
SAM'S EAST, INC.**

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the above and foregoing instrument has been served upon all known counsel of record by electronic service on this the 22nd day of March, 2021.

Jeffrey W. Schmidt
BANDAS LAW FIRM, P.C.
802 N. Carancahua, Ste. 1400
Corpus Christi, Texas, 78401

Email: jschmidt@bandaslawfirm.com

/s/ James K. Floyd
James K. Floyd

Exhibit E

REGISTER OF ACTIONS

CASE NO. 2021CCV-60178-2

Susan McCullar vs. Sam's East, Inc.

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§
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§
§

Case Type: Injury or Damage - Other

Date Filed: 02/11/2021

Location: CCAL2

PARTY INFORMATION

		Attorneys
Defendant	Sam's East, Inc.	
Plaintiff	McCullar, Susan	Jeffrey W. Schmidt <i>Retained</i> 361-698-5200(H)

EVENTS & ORDERS OF THE COURT

	OTHER EVENTS AND HEARINGS			
02/11/2021	Original Petition (OCA)			
02/11/2021	Original Petition Documents E-filed			
	<i>Plaintiff's Original Petition</i>			
02/11/2021	Service Request Information Sheet			
	<i>Service Requested</i>			
02/11/2021	Jury Fee Paid			
02/23/2021	Citation			
	Sam's East, Inc.	Served	02/25/2021	
		Response Due	03/22/2021	
		Returned	02/25/2021	
02/25/2021	Proof of Service			
	<i>Citation With Return of Service Sam's East, Inc</i>			

FINANCIAL INFORMATION

	Plaintiff McCullar, Susan		
	Total Financial Assessment		367.00
	Total Payments and Credits		367.00
	Balance Due as of 03/23/2021		0.00
02/12/2021	Transaction Assessment		367.00
02/12/2021	E-file Payment Receipt # 2021-1669-DCCLK McCullar, Susan		(367.00)

Exhibit F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

SUSAN McCULLAR

VS.

SAM'S EAST, INC.

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CIVIL ACTION NO.: 21-CV-51

JURY DEMANDED

LIST OF COUNSEL OF RECORD

1. Jeffrey W. Schmidt
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(361) 698-5200 Telephone
(361) 698-5222 Facsimile
**ATTORNEYS FOR PLAINTIFF,
SUSAN McCULLAR**

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